

APR 21 2006

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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ABEL ANGEL GARCIA-QUIJADA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72768

Agency No. A29-264-060

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2006^{**}

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Abel Angel Garcia-Quijada, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his motion to reopen removal

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings due to ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review constitutional and legal claims de novo, *Castillo-Perez v. INS*, 212 F.3d 518, 523 (9th Cir. 2000), and review for abuse of discretion the denial of a motion to reopen, *de Martinez v. Ashcroft*, 374 F.3d 759, 761 (9th Cir. 2004). We deny the petition for review.

Without deciding whether the Garcia-Quijada received ineffective assistance of counsel, we conclude that the BIA did not abuse its discretion in determining that Garcia-Quijada failed to demonstrate he was prejudiced. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003). The IJ was permitted to rely on the certified conviction records submitted by the government to determine that Garcia-Quijada was convicted of conspiracy to possess marijuana for sale in violation of Cal. Penal Code § 82 and Cal. Health & Safety Code § 11359, *see Tokatly v. Ashcroft*, 371 F.3d 613, 621 (9th Cir. 2004), and correctly determined that Garcia-Quijada's conviction precluded him from the relief he requested, *see* 8 U.S.C. § 1229b(a); *Toro-Romero v. Ashcroft*, 382 F.3d 930, 932 n.2 (9th Cir. 2004). Garcia-Quijada's contention that he was eligible for relief from removal because his conviction was expunged under Cal. Penal Code § 1203.4 is unavailing because he was not convicted of simple possession, *see Dillingham v. INS*, 267 F.3d 996, 1005-07 (9th Cir. 2001) (holding that an alien

may not be deported where conviction for first-time simple possession of narcotics was expunged under state rehabilitative laws), and a conviction expunged under Section 1203.4 remains a conviction for purposes of federal law, *see Ramirez-Castro v. INS*, 287 F.3d 1172, 1175 (9th Cir. 2002).

All remaining contentions are unpersuasive.

PETITION FOR REVIEW DENIED.